

Attachment B

Department Responses to Comments

**DEPARTMENT RESPONSES TO COMMENTS RECEIVED DURING
THE PUBLIC HEARINGS AND THE PUBLIC COMMENT PERIOD
FOR THE LICENSING OF THE POND VIEW FACILITY
JANUARY 2003**

1. Public Health and Quality of Life Issues (general):

A number of area residents and public officials expressed concern about potential public health and quality of life impacts associated with the Pond View facility.

Rules 1 and 7 of the Solid Waste Regulations outline the standards required for this facility to protect public health and the environment. They address specific operating standards including, but not limited to, provisions for protecting ground and surface water, odor, dust, storage of materials and fire controls, as well as requirements for reuse, sampling, and testing of generated "products."

The Department has reviewed all of the submitted materials, comments and data, and has determined that the current application has satisfactorily addressed these regulatory requirements.

In addition, the Department has gone as far as possible to address many of the issues related to community impacts and quality of life raised by the residents during the public involvement process. The Department has included specific conditions to protect Omega Pond by establishing a partially vegetated buffer zone between the facility and the pond, closely reviewed the dust control provisions in the operating plan and required that the facility file a wetlands application for the water withdrawal, included a requirement that Pond View test for noise as the operation moves to a higher capacity, and has called upon Pond View to analyze traffic patterns to instruct their customers and drivers on using the routes that minimize impacts to the community.

The Department has also taken the position that the expansion permitted by this license should not be implemented until the dispute with the City of East Providence over the terms and conditions of the zoning variance issued to the facility is resolved. The Department has made it abundantly clear that the issuance of a DEM license in no way restricts the right or ability of the City to enforce any municipal laws relating to the facility.

2. Water Quality Issues:

A number of individuals expressed concern about the impact of this facility on the water quality of Omega Pond and the groundwater of the area.

Rules 1.4.02 and 7.2.03 of the Solid Waste Regulations require all facilities to prevent any on-site source from polluting any of the waters or groundwaters of the state. Rule 7.2.04 of the Regulations allows the Department to require a water quality monitoring plan, and the installation of monitoring wells at locations approved by the Department.

Surface water monitoring of Omega Pond has been conducted quarterly by BETA Group, Inc. for over three (3) years and, in accordance with an approved monitoring plan, will continue as a license requirement. The surface water monitoring results received to date indicate that the Pond View operations are not having any adverse effect on the pond. Pursuant to a separate Underground Injection Control (UIC) permit, a surface water collection system has been designed and will be required to be constructed to adequately address stormwater and groundwater pollution prevention requirements. Silt fences and hay bales have been placed along the site perimeter to prevent loose materials and sediment from washing into the pond. Department inspections have not revealed erosion, runoff, or discharges into Omega Pond.

Pond View has installed groundwater-monitoring wells on the site and quarterly monitoring of these wells is required as a condition of the license.

The Department will review all monitoring results submitted by Pond View Recycling, Inc. and, if there is any indication of groundwater or surface water violations, the Department will take the steps necessary to address and resolve the violations.

One comment was received requesting that mercury be included in the above-described testing protocols. Mercury is included in the list of parameters tested for in the surface water monitoring plan. For groundwater monitoring at solid waste facilities, the Department normally requires testing for the parameters listed in Appendix A of the Solid Waste Regulation No. 2. Although this list does not include mercury, it is a very stringent list established by the Environmental Protection Agency (EPA) for monitoring at landfills. The Department may require that additional parameters or contaminants be added to this list for subsequent sampling, including potentially mercury, if exceedances are found as a result of regular testing.

3. Wetlands Issues:

The Department received several comments concerning potential wetlands violations at the Pond View facility. Specifically, the comments referred to construction of the railroad spur and the withdrawal of water from Omega Pond for use in dust control measures.

Relative to the construction of the rail spur, the Providence & Worcester Railroad Co. received an Insignificant Alteration permit for construction of the railroad spur from the RIDEM, Office of Water Resources, Wetlands Program (permit # 02-0085) on March 20, 2002. Department staff inspected the site on September 12, 2002. The inspection revealed that the company had fully complied with the conditions of the permit.

RIDEM, Office of Compliance and Inspection (OC&I) investigated complaints about water withdrawal from Omega Pond on several occasions, most recently in response to a complaint from Save the Bay on September 4, 2002. The investigation revealed that Pond View is withdrawing water from Omega Pond through several 2" black hoses for dust control and cooling of the shredder.

While Pond View Recycling, Inc. never obtained a permit for the withdrawal, it is the Department's position that a permit had not been required and that the withdrawal has not constituted a violation. The basis for the Department's position is as follows:

- (1) There is evidence that some historic water withdrawal has always occurred at the site. An old pump house and pump are situated adjacent to the pond.
- (2) There is no indication that the amount of water being withdrawn from the pond is impacting the pond in any way.
- (3) The amount of the withdrawal is minuscule given the volume of the pond. The pond holds approximately 81 million gallons of water, and the company is withdrawing at most 30,000 gallons per day (representing .03% of the volume of the pond).
- (4) Pond View Recycling, Inc. submitted a letter to DEM, dated April 11, 2001, requesting a determination from the Office of Water Resources regarding the regulatory status of the withdrawal. Although DEM provided no written response, the Department did indicate verbally that the nature of the withdrawal did not appear to require a permit.

Notwithstanding the above, the Department now believes that it would be prudent for Pond View Recycling, Inc. to obtain formal authorization for its withdrawal, particularly for the purpose of establishing a cap on the maximum daily amount. Accordingly, the Department is requiring, as a condition of the license that Pond View Recycling, Inc. submit a wetlands application for the withdrawal within ninety days of the date of issuance of the license.

Comments were also received about maintaining a buffer zone (50 feet) free of any activity including vehicle traffic between the facility's operation and Omega Pond. Pond View has agreed to place concrete barriers at the edge of the buffer zone and restrict any activity beyond the barrier, including vehicle traffic, with the exception of emergency and dust control vehicles; and this provision has been incorporated into the license as a requirement.

4. Dust Control Issues:

There were a number of comments that dust generated at the Pond View facility travels offsite into the surrounding neighborhood and Omega Pond. Section 7.1.05 of the Solid Waste Regulations requires this facility to have a dust control program that prevents dust from leaving the facility. The Air Pollution Control Regulations No. 5 also prohibit fugitive dust from emanating from any facility.

The facility's dust control program described in its Operating Plan includes application of calcium and water to gravel access roads and equipment storage areas. The facility has two (2) water application trucks for that purpose. Paved areas are swept of dirt and

sediment. Pond View has also installed a misting system in the processing area to control dust produced during the grinding process. The measures proposed in Pond View's application are similar to, or exceed, those that have found to be effective at other C&D debris processing facilities in the State. Department staff have also observed these dust control measures in operation at the facility and found them to be satisfactory.

The Department has responded to complaints about dust on Omega Pond by inspecting the facility at the time of the complaints. The inspectors have not been able to directly attribute dust problems to the Pond View facility during those inspections, and recent inspections have not revealed dust control problems at the Pond View facility. The Department will continue to inspect the facility, both in response to complaints and as part of its routine compliance inspection program. If any dust problems are identified the Department will take the steps necessary to address and resolve the problems.

5. Odors and Other Air Quality Issues:

The Department received some comments from neighboring residents about odors from the Pond View facility. Section 7.1.05 of the Solid Waste Regulations requires this facility to have an odor control program as part of its Operating Plan and application. An effective odor control plan is necessary to prevent odors from traveling off the site.

The facility's odor control program outlined in its Operating Plan relies upon the timely removal of C&D materials to prevent decomposition and the associated odors. The time frames for the removal of C&D materials from this type of facility, mandated by state law and the Regulations, are in part required to prevent the production of these odors.

Rule 7.2.02 (b) states: "The facility must be able to demonstrate through records maintained at the facility and provided to the Department (upon request), that seventy-five percent (75%) of all material received by the facility is processed and removed from the site within six (6) weeks of receipt on a continuous basis, and in no case shall the facility store material on site for over three (3) months."

The odor control program also relies on the operator's obligation to recognize if any shipment of materials to the facility emits odors and to refuse to accept those materials. If any odorous materials are inadvertently accepted at the facility, Pond View is required to expeditiously remove them from the site. Pond View also stores 250 pounds of granular activated carbon on site for use in that situation.

The Department's inspection records reveal that on one occasion (6/20/00) Department staff detected a sulfur type odor at the facility's front gate. Subsequent inspections by Department staff have not revealed odor problems at the Pond View facility.

The Department will continue to inspect the facility, both in response to complaints and as part of its routine compliance and inspection program. If any odor problems are identified, the Department will take the steps necessary to address and resolve the problems.

6. Litter Control Issues:

The Department received complaints from neighbors that litter from the Pond View facility was traveling offsite into the pond and surrounding trees. Section 7.1.05 of the Solid Waste Regulations requires this facility to have a litter control program.

The facility's litter control program is described in its Operating Plan. Pond View employees are required to inspect and collect any dispersed litter on a daily basis. Outside contractors will be hired to supply temporary personnel and equipment (e.g. telescopic lifts and vacuum trucks) if necessary to expedite the cleanup of any litter that inadvertently blows off the site. A perimeter fence has been constructed between the site and Omega Pond. These measures are consistent with those required at similar facilities in the State. Department staff have observed Pond View employees conducting litter patrols. Recent inspections have not revealed litter control problems at the facility.

The Department will continue to inspect the facility, both in response to complaints and as part of its routine compliance and inspection program. If any litter problems are identified, the Department will take the steps necessary to address and resolve the problems.

7. Out-of-State Waste and Out-of-State Facility Issues:

Several comments were received expressing concern that out-of-state waste was being accepted at the Pond View facility and that it was eventually being disposed of at the RIRRC Central Landfill in Johnston.

Although solid waste facilities like Pond View are not prohibited from accepting or processing out-of-state waste at their facilities, RIGL Section 23-19-13.1 does prohibit the disposal of out-of-state waste at the Central Landfill. The Department has informed all solid waste facilities of this statutory prohibition and they are required to segregate out-of-state waste out of the waste stream. The statute specifically places responsibility to promulgate regulations for enforcement of that prohibition with the Rhode Island Resource Recovery Corporation (RIRRC). The Department has made, and continues to make, efforts to encourage RIRRC to promulgate regulations to better enforce this statute.

A comment was also received that Pond View's application was lacking information about the out-of-state facilities that receive waste from Pond View. Pond View's application does in fact provide the identity and location of all such destination facilities (in state and out-of-state); and such information is available to the Department upon request, during inspections of the facility. As is the case with other solid waste management facilities, Pond View Recycling, Inc. has requested that the identity of these destination facilities be kept confidential per RIGL Chapter 38-2-1 et seq.

The Department recognizes the need to monitor the capacity of the facility and the ultimate fate of the materials that it manages. The Department further recognizes the

public's right to information that is not protected under State law. The Department will continue to explore the applicability of State law vis-à-vis the identify of the out-of-state facilities that receive waste from Pond View Recycling, Inc. and make available for public review any and all information that is not deemed confidential. We are continuing to review this information and the applicability of the facility's claim of confidentiality.

8. Transfer Station and Non-C&D Waste Issues:

There were some comments received about Pond View accepting waste other than C&D materials and therefore operating as a transfer station. One comment specifically referred to this facility receiving toilets and carpeting. Another comment expressed concern about the potential impacts from tire recycling. The current application is for a C&D debris processing facility, not for a transfer station or a tire recycling facility.

The Solid Waste Regulations for C&D debris processing facilities specifically prohibit the acceptance of regulated waste other than C&D debris at the facility. Plumbing fixtures (including porcelain and metal toilets) are included in the definition of C&D waste and therefore may be accepted by this facility. Although carpeting is excluded from the definition of C&D waste, the Solid Waste Regulations recognize that some small amounts of prohibited materials from demolition processes may inadvertently enter a facility. Rule 7.1.05(q) of the Solid Waste Regulations requires each facility's Operating Plan to set forth the procedures the facility will follow to handle other solid waste or hazardous waste that may inadvertently enter the facility. Pond View's Operating Plan describes procedures for inspecting loads, recognizing prohibited waste, and properly separating, handling and removing it from the facility. The Operating Plan also names a hazardous waste contractor whose services will be obtained if necessary for proper handling and disposal of hazardous waste.

The Department will continue to inspect the facility, both in response to complaints and as part of its routine compliance and inspection program. If any problems with the types of materials accepted by, or managed at, the facility are identified, the Department will take the steps necessary to address and resolve the problems.

9. Local Government and Community Issues:

A number of local government and community issues were raised during the public comment period. These issues generally involve zoning, hours of operation, trucks, traffic hazards, property values, noise, buildings, berms and fences. The Department has considered these issues and, although it is primarily the responsibility of the municipality to enforce many of these issues through local ordinances, the Department has addressed some of the concerns raised through license conditions.

The Department takes the position that the expansion permitted by the DEM license should not be implemented until the facility has resolved its dispute with the City of East Providence over the terms and conditions of the zoning variance and compliance with other municipal ordinances.

It is Pond View Recycling, Inc.'s responsibility to comply with all applicable local ordinances, is underscored by Rule 1.5.05 of the Solid Waste Regulations.

"Granting of a license, license renewal, registration or permission for an equipment addition shall in no way affect the applicant's responsibility to meet all zoning and other local ordinances, nor the applicant's responsibility to obtain any local permits, except as provided by Rhode Island General Laws."

Further, Rule 7.1.01(e) of the regulations states:

"Granting of a license, license renewal, registration or permission for an equipment addition shall in no way affect the applicant's responsibility to meet all federal and state laws, local zoning and other local codes or ordinances."

The statutes and regulations recognize local/municipal control over zoning and other municipal issues, and the Department's approval in no way affects the right or ability of the City of East Providence to enforce its local laws. More specifically, the issuance of a license by DEM does not over-ride local zoning or other municipal laws, and a facility's right to operate pursuant to a DEM license is conditioned on compliance with local laws.

Property Devaluation: The issue of property values in this case appears to be tied to the City's permitted use of the applicant's property, which is a zoning issue. The Department's authority and regulations do not address local zoning issues around a facility. The applicant is required to abide by all local requirements, and the City has authority to enforce those requirements.

Noise Issues: The regulation of noise from industrial facilities, including C&D debris processing facilities, has historically been done by cities and town through local noise ordinances. In this instance, previous approvals issued by the City require quarterly measurement of noise. The applicant is required to abide by all local requirements governing noise, and the City has authority to enforce those requirements. In addition, the conditions of the DEM license require that the facility conduct an additional study of noise

levels when it is operating at maximum capacity. The results of this study will be available to the City for its use in maintaining compliance with the municipal noise regulations.

Trucks, Traffic and Other Vehicle and Road Issues: Issues involving vehicles have also historically been the responsibility of local municipalities, who have exercised their control via zoning, weight restrictions, posted restriction signs, as well as routine maintenance and repair. The applicant is required to abide by all local requirements governing traffic and road issues, and the City has authority to enforce requirements. In addition, the condition #9 of the DEM license requires that the facility study trucking routes, determine the routes that pose the least impact to residential areas, and direct drivers to use those routes.

Buildings, Berms, and Fences: the City has required Construction of these structures. The applicant is responsible for complying with all local requirements governing these issues, and the City has authority to enforce those requirements. . The facility site plans must show the location of all structures, and the Operating Plan should describe their function where necessary. C&D materials, whether processed or unprocessed, cannot be used for construction of a berm. The Department did issue a wetlands permit (insignificant alteration, No. 0470) on December 5, 2002 for construction of a stockade fence at the facility.

10. Vector Control Issues:

Some residents expressed concern about rodents at the Pond View facility. Section 7.1.05 of the Solid Waste Regulations requires the facility to have a Vector Control Program as part of its Operating Plan. The facility's Operating Plan does include procedures and provisions for addressing vector issues including use of professional pest control services if necessary. The measures proposed by Pond View are consistent with those instituted at similar facilities in the State. Inspections by Department staff have not revealed any vector control problems at this facility.

The Department will continue to inspect the facility, both in response to complaints and as part of its routine compliance and inspection program. If any problems with vector control are identified, the Department will take the steps necessary to address and resolve the problems.

11. Record Keeping and the Amount of Materials Entering the Facility:

A comment was received expressing concern that there are no measurable or enforceable limits on the amount of C&D materials received by the Pond View facility. The Solid Waste Regulations do require detailed record keeping demonstrate the amounts of materials received by the facility on daily basis. In accordance with this requirement, the facility does generate scale house weight slips that provide the appropriate information, and these slips be made available to DEM staff upon request. During inspections, Department staff often conduct reviews of those slips to insure the facility is operating within the daily tonnage limits required by the license. Copies of the weight slips

obtained during these inspections are kept on file in the Department. The facility also accepts materials such as concrete, asphalt, and stumps that are not regulated.

The Department will continue to inspect the facility, both in response to complaints and as part of its routine compliance and inspection program. If any problems are identified, the Department will take the steps necessary to address and resolve the problems.

12. Increased Tonnage, Storage, and Stockpile Issues:

The Department received some comments expressing concern over the increase in tonnage to 500 tons per day at the Pond View facility and its impact on storage and stockpiles. Another comment expressed concern that the facility is a landfill.

Rule 7.2.02 (b) of the Solid Waste Regulations states: "The facility must be able to demonstrate through records maintained at the facility and provided to the Department (upon request), that seventy-five percent (75%) of all material received by the facility is processed and removed from the site within six (6) weeks of receipt on a continuous basis, and in no case shall the facility store material on site for over three (3) months."

Pond View's Operating Plan does specify the maximum size of stockpiles that the site can readily accommodate and their location on the site. The facility has also adequately handled the removal of materials from its site with the current trucking service. With the new rail service to the facility, there is a considerable increase in Pond View's ability to handle the increase in tonnage and remove materials from the site in the timeframes required by the regulations. Pond View has also substantially over funded the required financial assurance to ensure proper third party removal of stockpiles, if necessary.

13. History of Noncompliance, Deficiencies, Violations, and Enforcement Actions:

A number of comments were received by the Department referring to a history of noncompliance at the Pond View facility. Specific complaints were received about the sign at the entrance to the facility and about the facility not having permission to install another grinding machine.

Minor deficiencies are commonly found at licensed solid waste facilities throughout the state. Often when inspectors observe such deficiencies at a facility, they are noted in the inspection reports and the facility owner/operator is required to correct them. Routinely, the Department initiates the enforcement process by issuing informal enforcement actions, including Notices of Intent to Enforce (NOIs), which identify apparent violations and describe the steps necessary to come into compliance. If the deficiencies are corrected in a timely manner to the satisfaction of the Department, formal enforcement actions with penalties may not be necessary.

A Notice of Intent to Enforce (NOI) was issued to Pond View on October 6, 1999 for the following: exceeding their weight limit (over 150 tons) on one day, insufficient record keeping, excessive stockpiling of materials (in one pile over 20 ft high, in another pile

over 50 ft wide), less than 50 ft of separation between two piles, and a screenings stockpile left too close to the building. These deficiencies were corrected in a timely manner to the satisfaction of the Department, and as such, no fines or penalties were issued. A Notice of Violation (NOV) was issued to Pond View on March 14, 2000 for the placement of processed C&D materials at three locations in October 1999 in violation of the conditions of an approval previously granted by the Department. The NOV was settled with the payment of a fine and removal of the materials. A second Notice of Violation was issued to Pond View on March 21, 2000 for receiving petroleum-contaminated soil at the facility in November 1999. The NOV was settled with the payment of a fine and removal of the materials.

Inspections of Pond View over the past three years have found the facility in substantial compliance with the applicable Solid Waste Regulations. Occasionally, minor deficiencies in the operation of the facility have been identified, and when notified of the deficiencies, Pond View has cooperated with the Department and made the appropriate corrections to their operation in a timely manner. Currently there are no formal enforcement actions or penalties outstanding against Pond View.

The sign at the entrance to the facility was recently modified at the request of the Department. At this time, only one grinding machine is in operation at the facility. The facility is required to request a modification to their operating plan for any additional equipment and may not use that equipment without first obtaining approval by the Department. Use of grinding equipment must also be in conformance with all local requirements.

14. Soot, Burning of Carcinogens and Potential Fire Hazards:

A comment was received expressing concern over soot and burning carcinogens at Pond View. Burning or incineration of any waste is prohibited at any solid waste facility that has not been licensed as an incinerator. Pond View does not have a license for an incinerator. Inspections of the Pond View facility have not revealed any burning activities or the presence of soot or ash at the Facility.

The Department will continue to inspect the facility, both in response to complaints and as part of its routine compliance and inspection program. If any evidence of burning or incineration of solid waste is found, the Department will take the steps necessary to address and resolve the problems.

Section 7.2.06 of the Solid Waste Regulations and state law require that a facility shall not pose a hazard to the health and safety of persons or property from fires, and further require all facilities to submit a fire protection plan to the local fire chief for approval. The Chief of the East Providence Fire Department has notified the Department that Pond View's Fire Protection Plan has been approved.

15. Inspections and Inspectors:

Comments were received on the frequency and adequacy of DEM's inspections of the facility. Inspections of the Pond View facility are unannounced and conducted randomly. Typically inspections are performed on a monthly basis, as is done for most solid waste management facilities; however, inspections can be, and have been, increased when warranted. Department staff who conduct these inspections have the appropriate training and experience for inspecting solid waste management facilities. The following inspections were conducted at Pond View by staff from the Department's Office of Waste Management (OWM) and Office of Compliance & Inspection (OC&I) in 2002:

Facility Inspections - 2002

Date	Time	Date	Time
January 16, 2002	11:00 am	July 19, 2002	10:00 am
February 4, 2002	9:00 am	August 15, 2002	10:30 am
March 4, 2002	3:00 pm	September 24, 2002	10:00 am
April 23, 2002	11:00 am	October 31, 2002	1:30 pm
June 4, 2002	12:30 pm	November 26, 2002	10:00 am
June 24, 2002		December 27, 2002	10:30 am

Water Pollution Inspections - 2002

Inspection Date	Inspection	Insp. Results
March 27, 2002		No Violation
April 4, 2002	Drainage/discharge	No Violation
September 12, 2002	Rail Spur/Wetlands	No Violation

Air Pollution Inspections - 2002

Complaint Date	Inspection Date	Inspection Time	Insp. Results
January 29, 2002	January 29, 2002	2:50 pm	No Violation
February 12, 2002	February 12, 2002	1:30 pm	No Violation
April 9, 2002	March 6, 2002	1:15 pm	No Violation
July 16, 2002	May 10, 2002	1:40 pm	No Violation
August 23, 2002	September 18, 2002	2:30 pm	No Violation

16. Need for Additional C&D Capacity in Rhode Island:

A comment was received stating that the Pond View license should not be approved because the applicant failed to demonstrate the alleged need for additional C&D capacity in Rhode Island. In accordance with Rule 1.5.07 of the Regulations: "Private facilities shall meet all relevant criteria established by regulation to protect human health and the environment, and the Director shall require no further demonstration of need." The alleged need for additional capacity, whether true or not, was therefore not considered as part of the Department's regulatory review of the license application.

17. Public Notice and Public Hearing Process:

Comments were received on the adequacy and effectiveness of the public involvement process. In accordance with RIGL, Chapter 23-18.9-9, the Department reviewed the license application materials and gave public notice of its intention to issue or deny this license prior to the public hearing process. The Department gave public notice of its intent to issue this license on July 11, 2002. An informational workshop was held on the license application on July 24, 2002, and a public hearing was held on September 10, 2002 in accordance with the above statute. An additional public hearing was held on September 11, 2002 to accommodate those who could not attend on September 10th. In addition, written comments were received for another thirty (30) days following the close of the public hearing.

18. Unrelated Comments:

There were some comments received by the Department during the public comment period that were not related to the licensing of the Pond View facility. Those comments are outside the scope of the Department's regulatory authority relative to the licensing of solid waste management facilities.